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UNDER 37 CFR 1.8(a)

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23 OCTOBER 2003
HUESCHEN AND SAGE

G. PATRICK SAGE
Dated: 23 OCTOBER 2003

PF 95 PCT SEQ

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Applicant : Christine LIBON, Nathalie CORVAIA, Alain BECK and Jean-Yves BONNEFOY

Serial No. : 09/936,677

Filed : SEPTEMBER 14, 2001

Title : IMMUNOSTIMULANT BACTERIAL MEMBRANE FRACTIONS IN CANCER TREATMENT

Art Unit : 1645

Examiner : Tammy K. FIELD, Esq.

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Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

RESPONSE AND ELECTION UNDER 37 CFR § 1.111

Sir:

Responsive to the Office Action, a Restriction Requirement, dated September 24, 2003, the applicants elect, with traverse, to prosecute the invention of Group II. It is the position of the Office that the application pertains to a plurality of patentably distinct compounds. The applicants traverse this conclusion on the grounds that a scientist would find the instant invention to involve a common special technical innovation. Absent contradictory evidence that those skilled in the art would find the instant invention to consist of

multiple inventions, it is submitted that the Office Requirement is not substantiated.

The Office also requests that the applicants identify a single species which is representative of the invention of interest. The applicants reiterate that the instant application is one invention and that the species are pharmacologically related; however, the applicants comply with the Office requirement by selecting the species treatment of chemotherapy (corresponding to Claim 46) and for the treatment of malignant melanomas (corresponding to Claim 51).

In the event that the Restriction Requirement is made final, the Office may withdraw the non-elected subject matter without prejudice to its/their rejoinder during later examination and/or to its/their prosecution in a Divisional Application.

The applicants respectfully submit that by merely withdrawing the non-elected subject matter pending notification of allowable subject matter, the applicants distinctly and affirmatively identify subject matter which they assert, upon examination will be found a part of the claimed invention. The applicants reassert their right to rejoin non-elected claims upon the identification of allowable subject matter.

Accordingly, entry of the present Election into the record of this application, and swift and favorable consideration of the instant application is respectfully solicited. Swift and favorable consideration of the instant application is respectfully solicited.

Respectfully submitted,

THE FIRM OF HUESCHEN AND SAGE

By: 
G. PATRICK SAGE

Dated: October 23, 2003
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